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In re Application of Naoto Hirota

Application No. 10/657,470

Filed: September 8, 2003

Attorney Docket No. KANEKO.008AUS

DECISION ON PETITION

This is a decision on the petition, filed October 19, 2009, which is being treated as a petition under 37 CFR 1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision should be filed within two (2) months from the mail date of this decision. *Note* 37 CFR 1.181(f). The request for reconsideration should include a cover letter and be entitled as a "Renewed Petition under 37 CFR 1.181 to Withdraw the Holding of Abandonment."

This application was held abandoned for failure to file a proper reply in a timely manner to the Final Rejection mailed September 26, 2008. A Notice of Abandonment was mailed on August 4, 2009.

Applicant files the present petition and states that a reply to the Office action mailed September 26, 2008, was timely filed on March 24, 2009 with payment of a 3-month extension fee. Applicant provides a copy of the above.

The Office is in receipt of the reply received on April 6, 2009. However, an Advisory Action was mailed on May 4, 2009, stating that, "THE REPLY FILED 06 April 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE." The Advisory Action also stated that the period for reply expires 3 months from the mailing date of the final rejection.

As stated in the Notice of Abandonment mailed August 4, 2009, "The maximum time period for reply to the 9/26/08 Final Rejection is six months (37 CFR 1.134). The RCE filed on 5/26/09 (received 6/4/09) was filed after the expiration of the maximum time period for reply, which expired on 3/26/09. 37 CFR 1.136(a)(1) does not allow for extension of time beyond the maximum period set by statute."

In view of the above, and since a **proper** reply was not filed prior to the maximum time period for reply, the petition to withdraw the holding of abandonment under 37 CFR 1.181 is **dismissed**.

Petitioner may with to consider filing a petition under 37 CFR 1.137(b) stating that the delay was unintentional. Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of the issue fee was "unavoidable." This amendment to 35 U.S.C. § 41(a)(7) has been implemented in 37 CFR 1.137(b). An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the \$1,620.00 petition fee.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

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Any questions concerning this matter may be directed to the undersigned at (571) 272-3208.

/Karen Creasy/
Karen Creasy
Petitions Examiner
Office of Petitions